

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

<p>STATE OF OKLAHOMA,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>TYSON FOODS, INC., et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 4:05-cv-00329-JOE-SAJ</p>
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**STATE OF OKLAHOMA'S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF IN
OPPOSITION TO COBB-VANTRESS, INC.'S MOTION TO DISMISS
COUNTS 4, 6, 7, 8, 9, AND 10 OF THE FIRST AMENDED COMPLAINT OR
ALTERNATIVELY TO STAY THE ACTION**

COMES NOW Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA ("the State"), by and through counsel, and respectfully submits the following reply brief in further support of its Motion for Leave to File a Supplemental Brief in Opposition to Defendant Cobb-Vantress, Inc.'s Motion to Dismiss Counts 4, 6, 7, 8, 9, and 10 of the First Amended Complaint or Alternatively to Stay the Action and to reply to new matters raised by Defendant Cobb-Vantress, Inc. ("Cobb-Vantress") in its responsive papers.

Specifically, the State states as follows:

1. Contrary to Defendant Cobb-Vantress' assertions, there is no right to have the last word with respect to a motion.

2. Contrary to Defendant Cobb-Vantress' assertions, the State's proposed supplemental brief is proper and not merely a rehash of previous arguments. Rather, the proposed supplemental brief is made necessary by the repeated incorrect characterizations of both the law and the State's allegations by Defendant Cobb-Vantress in its reply brief. The supplemental brief, for instance, sets the record straight, without limitation, as to the following:

a. Defendant Cobb-Vantress' incorrect contention in its reply brief that the State's common law claims are preempted by Oklahoma's statutes (ignoring the fact that, of course, nothing in the Oklahoma statutes expressly or implicitly authorizes the Poultry Integrator Defendants to engage in poultry waste handling and disposal practices that cause pollution);

b. Defendant Cobb-Vantress' incorrect contention in its reply brief that the Agriculture Code only applies to the discharge of poultry waste directly into the State's waters (ignoring the fact that, of course, the statutes and regulations at issue comprehensively forbid poultry operations from, among other things creating environmental hazards or contaminating the waters of the state by discharge and run-off of the constituents of poultry waste);

c. Defendant Cobb-Vantress' incorrect contention in its reply brief that the State must exhaust an undefined "administrative remedy" before pursuing these violations in court (despite the fact that, of course, the Agriculture Code contains no administrative remedies which the Attorney General must, or could exhaust);

d. Defendant Cobb-Vantress' incorrect contention in its reply brief that the Attorney General must await the request of a regulatory official before seeking redress in the courts for violations of the statutes at issue (despite the fact that, of course, these statutes contain no such requirement and the Attorney General is expressly authorized to enforce these statutes even in the absence of such a request);

e. Defendant Cobb-Vantress' incorrect contention in its reply brief that the doctrine of primary jurisdiction bars the State's suit against the Poultry Integrator Defendants (despite the fact that, of course, courts routinely decide whether or not conduct is causing pollution);


3. Contrary to Defendant Cobb-Vantress' assertion, the State's Motion for Leave accurately recited that Defendant Cobb-Vantress objected to the filing of a supplemental brief by the State. The State was under no obligation to recite a counter-proposal advanced by Defendant Cobb-Vantress that the State had rejected, and that merely reflected Defendant Cobb-Vantress' unfounded belief that it was entitled to the last word. Further, Defendant Cobb-Vantress' request to file its own supplemental brief, unlike the request of the State, is unsupported by any articulated need, other than to in fact have the last word. Consequently, since Defendant Cobb-Vantress does not articulate any need for a response, the Court should conclude the State's supplemental brief creates no need for further clarification by Defendant Cobb-Vantress.

4. Allowing the State's supplemental brief to be filed is within the Court's discretion. *See* LCivR 7.1(h). The fundamental issue presented is whether the supplemental brief assists the Court in understanding and resolving the issues before it. The State respectfully submits that its supplemental brief will assist the Court and should be permitted to be filed and considered.

WHEREFORE, this Court should grant the State's Motion for Leave to File a Supplemental Brief in Opposition to Cobb-Vantress, Inc.'s Motion to Dismiss Counts 4, 6, 7, 8, 9, and 10 of the First Amended Complaint.

Respectfully Submitted,

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January 10, 2006.

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2006, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of Court will transmit a Notice of Electronic filing to the following ECF registrants:

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